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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2937 OF 2026

Sagar Fulchand Luniya …Applicant

Versus

The State of Maharashtra …Respondent

Mr. Piyush R Toshnival a/w. Yash R. Sonawale, for the Applicant.
Mrs. M.R. Tidke, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATE : 22nd OCTOBER 2026

PC:-

1. Heard Mr. Toshnival, learned Counsel appearing for the Applicant and Mrs. Tidke, learned APP, for the Respondent-State of Maharashtra.

2. By the present Anticipatory Bail Application, the Applicant is seeking pre-arrest bail in connection with C.R. No.688 of 2026 registered on 4th September 2026 with Kondhwa Police Station, District Pune, for the offences punishable under Sections 123, 223, 274 and 275 read with Section 3(5) of the *Bharatiya Nyaya Sanhita, 2023* ("**BNS**") and Sections 26(2)(i), 26(2)(iv) and 59 of the *Food Safety and Standards Act, 2006* and Sections 7(2), 20(2) of the Cigarettes and Other Tobacco Products (Prohibition of

Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ("**COTPA Act"**).

3. As per the prosecution case, the Applicant was procuring contraband material which is unsafe and dangerous for the health of people.

4. It is the submission of Mr. Toshnival, learned Counsel, that except the offence under Section 123 of BNS, all other offences are bailable offences. He submits that as far as Section 123 of BNS is concerned, the Supreme Court is considering the applicability of Section 123 (i.e. Section 328 of IPC) to the similar cases. He therefore, states that the anticipatory bail be granted.

5. On the other hand, Mrs. Tidke, learned APP, strongly opposes the Anticipatory Bail Application. He submits that the offence is very serious and, therefore, the Anticipatory Bail Application be rejected. On instructions, learned APP submits that there is one antecedent against the Applicant.

6. Learned APP submits that if this Court is inclined to grant anticipatory bail then the Applicant be directed to give undertaking

in terms of Order of the Supreme Court in the case of ***Abhijit Jitendra Lolage v. State of Maharashtra*** [1] and more particularly relies on following condition imposed by the Supreme Court in case of similar offences:

> "*It is deemed appropriate to impose the condition – "I, Abhijeet Jitendra Lolage do undertake to* ***not deal with Gutkha, that is, Pan Masala with Tobacco****". In case, the appellant – Abhijeet Jitendra Lolage* ***violates the terms and conditions of bail, including the undertaking imposed, it would be open to the prosecution to seek cancellation of bail****.*"
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> (Emphasis added)

Mr. Toshnival, learned Counsel appearing for the Applicant, after taking instructions, submits that the Applicant will give the undertaking.

7. The Supreme Court in the said order has imposed the above condition in case of similar offence.

8. Perusal of the record shows that except the offence under Section 123 of BNS the other offences are bailable offences. The issue whether Section 123 of BNS will apply to similar cases is pending before the Supreme Court. As the Applicant is ready to

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1 SLP (Crl.) Diary No.2806/2023

give the undertaking that he will not deal with Gutkha and Tobacco products in any manner whatsoever, the case is made out for grant of anticipatory bail.

9. In view thereof, the following order is passed:

O R D E R

(a) In the event of arrest of the Applicant-Sagar Fulchand Luniya in connection with C.R. No.688 of 2026 registered with Kondhwa Police Station, District Pune, the Applicant is directed to be released on bail on his furnishing PR Bond in the sum of Rs.1,00,000/- with one or two solvent sureties in the like amount.

(b) The Applicant shall attend the concerned Police Station once in a month, i.e., first Sunday of each month, till filing of the charge-sheet and shall cooperate with the investigation.

(c) The Applicant to furnish an undertaking that he will not deal with banned products i.e. Gutkha, Pan Masala with Tobacco products, etc., in any manner whatsoever. Such undertaking is to be filed in this Court within a period of two weeks from today. The

Applicant to strictly comply with the said undertaking.

(d) The Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(g) The Applicant shall not leave India without prior permission of the Court.

(h) In case, the Applicant violates the terms and conditions of bail, including the undertaking, it would be open to the prosecution to seek cancellation of bail.

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10. The Anticipatory Bail Application is disposed of accordingly.

[MADHAV J. JAMDAR, J.]